

**The Workforce Connection, Inc.**

**Policy Title: Payment of Profit Under Contracts with For-Profit Organizations**

**Approved: 03/01/2016**

**Effective: 03/01/2016**

**Reference Number 2016-100-10**

**Status: Active**

**Modifications: 05/01/17 Name change**

**Purpose:**

The purpose of this letter is to issue the Policy of The Workforce Connection ("TWC") regarding the determination and payment of profit to for-profit organizations holding or seeking to hold a contract with TWC.

**References:**

- Workforce Innovation and Opportunity Act ("WIOA") and related rules and regulations
- 2 CFR 200.323

**Background:**

The Board of Directors of TWC BOARD is releasing this policy to improve efficiency and accountability and to keep this organization's policy in line with requirements of the U.S. Office of Management and Budget ("OMB"), U.S. Department of Labor ("DOL"), Illinois Department of Commerce and Economic Opportunity ("DCEO"), and all applicable federal rules and regulations.

**Policy:**

Awards for contracts are made to organizations which can provide services that are in the best interest of TWC and the communities of Boone, Stephenson, and Winnebago Counties regarding service, price, and deliverables, regardless of organization classification.

In accordance with applicable requirements, TWC will use a structured approach for payment of profit to for-profit contractors by using cost-plus-fixed-fee contracts, negotiating payment of costs and fixed fees separately, and linking the payment of profit to a for-profit contractor to fixed fees based on negotiated year-end performance benchmarks achieved by that individual contractor during the program year.

Specifically, the determination and payment of a fixed fee (i.e. profit) to a for-profit organization will be based on a three (3) step process:

1. The negotiation with each contractor seeking a fixed fee in addition to costs (i.e. a profit) of the benchmarks upon which the determination and payment of a fixed fee will be based will occur prior to the beginning of each program year, and
2. The contractor's budgeted costs will be analyzed to determine allowability, reasonableness, and necessity of those costs, and
3. The determination of the amount of the fixed fee earned based on year-end performance for that contractor's grant agreement.

Under a cost-plus-fixed-fee contract with TWC, where the contractor is reimbursed for all costs, the maximum amount of fixed fee payable shall not exceed seven percent (7%) of the contract's estimated operational, direct costs. The negotiated fixed fee level will range from zero percent (0%) to a maximum of seven percent\* (7%) of expenditures, excluding "pass-through" funds, such as those paid out by the contractor for supportive services, paid work experience, on-the-job training, customized / incumbent worker training or subcontracts for training. Although percentages of budgeted costs are used herein to provide the minimum and maximum levels of fixed fees payable to a contractor, the amount of fixed fees payable by TWC BOARD under any contract must be negotiated and agreed as a fixed fee (i.e. a dollar amount) and not as a percentage of estimated or actual costs. This is required to comply with OMB guidelines and is intended to help with budgeting and prevent payment of unbudgeted amounts above and beyond the negotiated fixed fee.

In order to establish a fair and reasonable fixed fee as profit for each WIOA program and contractor, the fixed fee level may vary for each WIOA program and shall be based on the following criteria:

- Contractor effort, which measures the complexity of the work and the resources required of the prospective contractor for contract performance.
- Contractor cost risk, which measures the degree of cost responsibility that the contractor will assume.
- Contractor investments, which measures the degree to which the contractor has reinvested past profits to improve its effectiveness and cost efficiency of its operations and develop service capacity in their WIOA programs.
- Amount subcontracted.
- Past accomplishments and performance, which measures the degree the contractor has consistently and efficiently achieved past contract goals.
- Similar profit rates in surrounding geographic area for similar work within the industry.

For each WIOA program type (for instance, "Workforce Center" or "Affiliate"), TWC will determine the performance benchmarks that will be used in the determination and calculation of the fixed fee. The benchmarks will be standard across all contractors performing substantially the same scope of services, meaning the benchmarks will be the same for like programs. The set of benchmarks will be drawn from among the measures TWC BOARD uses in selection of contractors, renewal of grant agreements, and other standard purposes for which TWC BOARD measures contractor performance. Each benchmark will be given a weight in relation to the other benchmarks, determined by TWC, in calculating the fixed fee that can be earned in relation to that benchmark.

\* Exceeding the 7% may be required under extenuating circumstances, at which time the documented circumstance may be presented to the TWC Board for special consideration. However, under no circumstances will amounts negotiated be greater than 9%.

The fixed fee that each contractor is allowed for each WIOA program will be negotiated with the initial budget submitted prior to the beginning of the program year. During the negotiation, TWC will negotiate the threshold and the fixed fee levels for the benchmarks with each for-profit contractor. For-profit contractors may choose to seek the fixed fee or not, but must make this determination each year during the grant agreement negotiation period.

The intent and purpose behind the payment of fixed fees in this manner is to promote more efficient and effective contract performance and not merely reward average or historical levels of efficiency by a contractor. As such, the negotiated level for each performance benchmark used to determine and pay fixed fees will include a consideration of the contractor's scope of services and program components. A higher fixed fee may be requested for contractors committing to offer a broader scope or higher quality service than other contractors offering the same program.

For-profit organizations contracting with TWC may allocate funds to the fixed fee line item based on a "negotiated eligible" amount equaling between zero percent (0%) but no more than seven percent (7%) of their projected expenditures excluding "pass-through" costs such as those paid out by the contractor for supportive services, paid work experience, customized / incumbent worker training or subcontracts for training in their WIOA budget. The fixed fee line item must be stated as a dollar amount and not as a percentage of costs. **The fixed fee amount that will actually be paid by TWC will depend on actual grant-agreement-end-performance.**

The fixed-fee-related performance benchmarks, their weight, and the total budgeted fixed fee amount will be listed in a Fixed Fee Benchmarks letter that TWC will send to the for-profit contractor at the beginning of the grant agreement. This letter will serve as an addendum to the budget for the contract. The fixed fee line item amounts will be included in the budgets submitted by the contractor and approved by TWC.

Performance will be measured and the fixed fee paid separately for each program and funding stream a contractor may operate. Thus, for a contractor with two separate grant agreements (programs), each having the Adult and Dislocated Worker funding streams, four separate fixed fee line items will be included in that contractor's four separate budgets.

In order to be eligible for any fixed fee, the for-profit contractor must meet the threshold performance level on **all** performance benchmarks for the WIOA grant agreement that were agreed upon and set forth in the Fixed Fee Benchmarks letter. Failure by the contractor on any one benchmark means forfeiture of eligibility for a fixed fee on all benchmarks under that grant agreement.

The fixed fee will be paid after the end of the grant agreement period. The fixed fee should be requested on a separate voucher from normal program expenditures, so that the process of gathering and analyzing performance data will not delay payment to the contractor of vouchers for normal program expenditures. Vouchers requesting payment of a fixed fee must be submitted no later than fifteen (15) days after the end of the grant agreement period. Performance rates will be generated from the IWDS system forty-five (45) days following the end of the grant agreement period. All program data including the exit of all eligible customers (both positive and negative exits) must be entered into IWDS no later than thirty (30) days following the end of the grant agreement or the fixed fee will be forfeited.

Upon receipt of the fixed fee voucher and generation of the necessary data from the IWDS system and the contractor's program reporting, TWC will calculate the fixed fee level on each of the negotiated performance benchmarks. As noted herein, the fixed fee may be from 0% (if any negotiated benchmark was not met) up to 7% (if a benchmark was exceeded by the requisite level and all benchmarks were met). The nature of the benchmark will determine the scale of gradations of the fixed fee available for it. Some benchmarks may have several gradations while others may pay the full fixed fee amount for performance over the threshold level.

All regular monthly vouchers must be current by the time the fixed fee voucher is submitted to facilitate calculation of the correct fixed fee payout. TWC will make calculations as of forty-five (45) days following the end of the contract period, based on all program performance and vouchered expenditures submitted by that date. If vouchers are not current, the fixed fee may be forfeited or may be determined based only on expenditures vouchered to date.

**Budget Revisions:** At any time during the grant agreement period, or at the end of the grant agreement period, in the event that the contractor will not be able to earn the entire fixed fee amount, the contractor may request a budget revision to reallocate funds from the fixed fee line item. However, these funds may only be transferred to the supportive services, paid work experience, customized / incumbent worker training or professional and technical services (for subcontracts for training) line items. Whenever a budget revision is made, for any reason during the grant agreement period, the contractor's available fixed fee amounts and fixed fee benchmark form may be modified at the discretion of TWC.

TWC will provide further guidance as needed in relation to this policy via procedural instructions and training by program staff.

**Action Required:**

This information should be disseminated to staff responsible for maintaining performance data and to staff responsible for budgeting, vouchering, and accounting in connection with contracts with TWC.

**Inquiries:**

Questions regarding any aspect of this policy should be directed to the Executive Director of TWC.

**Effective Date:**

Immediately upon approval by the Board of Directors of TWC.